

LEGISLATURE OF NEBRASKA  
NINETY-SEVENTH LEGISLATURE  
SECOND SESSION

**LEGISLATIVE BILL 1295**

Introduced by Preister, 5

Read first time January 23, 2002

Committee: Agriculture

A BILL

- 1 FOR AN ACT relating to pesticides; to amend section 2-2625, Reissue
- 2 Revised Statutes of Nebraska; to adopt the Local
- 3 Pesticide Notification Act; to harmonize provisions; to
- 4 provide severability; and to repeal the original section.
- 5 Be it enacted by the people of the State of Nebraska,

1                   Section 1.   Sections 1 to 12 of this act shall be known  
2   and may be cited as the Local Pesticide Notification Act.

3                   Sec. 2.   For purposes of the Local Pesticide Notification  
4   Act:

5                   (1) Abutting property means property that has a boundary  
6   or boundary point in common with property on which pesticide is to  
7   be applied;

8                   (2) Authorized agency means a political subdivision that  
9   has adopted ordinances at least as stringent as the act to  
10   implement and enforce its own local pesticide notification  
11   provisions;

12                  (3) Building operator means the owner, the owner's agent,  
13   or the building manager of any public building or, in the case of a  
14   public building which is leased to a tenant who is responsible for  
15   the operation of the building, the tenant or the tenant's building  
16   manager;

17                  (4) Certified applicator has the definition found in  
18   section 2-2624;

19                  (5) Commercial applicator has the definition found in  
20   section 2-2624;

21                  (6) Commercial lawn application means application of a  
22   pesticide to the lawn of another person for hire or compensation;

23                  (7) Granular pesticide means any ground-applied solid  
24   pesticide that is not a dust or powder;

25                  (8) Pesticide means a substance or mixture of substances  
26   intended to prevent, destroy, repel, or mitigate any pest or any  
27   substance or mixture of substances intended for use as a plant  
28   regulator, defoliant, or desiccant, including any biological

1 control agent. Pesticide does not include any article that is (a)  
2 a new animal drug within the meaning of the Federal Food, Drug, and  
3 Cosmetic Act, 21 U.S.C. 321(v) (2), as such section existed on the  
4 effective date of this act, that has been determined by the United  
5 States Secretary of Health and Human Services to be a new animal  
6 drug by regulation establishing conditions of use for the article  
7 or (b) an animal feed within the meaning of the Federal Food, Drug,  
8 and Cosmetic Act, 21 U.S.C. 321(w), as such section existed on the  
9 effective date of this act, bearing or containing a new animal  
10 drug;

11 (9) Residential lawn application means the application of  
12 general-use pesticides to ground, trees, or shrubs on property  
13 owned by or leased to the individual making such application.  
14 Residential lawn application does not include:

15 (a) Application of pesticides for the purpose of  
16 producing an agricultural commodity;

17 (b) Application of pesticides around or near the  
18 foundation of a building for the purpose of indoor pest control; or

19 (c) Application of pesticides by or on behalf of an  
20 authorized agency, except that an authorized agency shall be  
21 subject to the requirements of section 6 of this act when such  
22 application is within one hundred feet of a dwelling,  
23 multiple-family dwelling, public building, or public park; and

24 (10) Spot application of a pesticide means the  
25 application of pesticide in a manually pressurized or  
26 nonpressurized container of thirty-two fluid ounces or less to an  
27 area of ground less than nine square feet.

28 Sec. 3. Every retail establishment that sells pesticides

1 for commercial or residential lawn application shall display a sign  
2 meeting standards established by the authorized agency under  
3 section 10 of this act in a conspicuous place. Such sign shall be  
4 placed as close as possible to the place where such pesticides are  
5 displayed.

6           Sec. 4. At least forty-eight hours prior to any  
7 commercial lawn application of a pesticide, the person or business  
8 making such application shall supply written notice, as described  
9 in ordinances adopted pursuant to the Local Pesticide Notification  
10 Act, to the occupants of all dwellings on abutting property with a  
11 boundary that is within one hundred fifty feet of the site of such  
12 application and to owners, owners' agents, or other persons in a  
13 position of authority for all other types of premises that are on  
14 abutting property with a boundary that is within one hundred fifty  
15 feet of the site of such application. The owner or owner's agent  
16 of a multiple-family dwelling shall provide such written notice to  
17 the occupants of such multiple-family dwelling. For all other  
18 types of premises, the owner, owner's agent, or other person in a  
19 position of authority shall post such written notice in a manner  
20 specified by the authorized agency.

21           Sec. 5. Section 4 of this act does not apply to:

22           (1) The use of an aerosol product with a directed spray,  
23 in containers of eighteen fluid ounces or less, when used to  
24 protect individuals from an imminent threat from stinging and  
25 biting insects, including venomous spiders, bees, wasps, and  
26 hornets;

27           (2) Application of a pesticide by direct injection into a  
28 plant or the ground;

1           (3) Spot application of a pesticide;

2           (4) Application of antimicrobial pesticides and  
3 antimicrobial products within the meaning of the Federal  
4 Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. 136 (mm) and  
5 136q(h) (2), as such sections existed on the effective date of this  
6 act;

7           (5) The use of nonvolatile insect or rodent bait in a  
8 tamper-resistant container;

9           (6) The use of boric acid and disodium octaborate  
10 tetrahydrate;

11           (7) The use of horticultural soap and oils that do not  
12 contain synthetic pesticides or synergists;

13           (8) Application of a granular pesticide;

14           (9) Emergency application of a pesticide when necessary  
15 to protect against an imminent threat to human health, except that  
16 prior to any such emergency application, the person making such  
17 emergency application shall make a good faith effort to supply the  
18 written notice required under section 4 of this act. Upon making  
19 an emergency application of a pesticide, the person making such  
20 application shall notify the authorized agency, using a form  
21 developed by the authorized agency for such purposes. The form  
22 shall include the name of the person making the emergency  
23 application, the pesticide business registration number or  
24 certified applicator number of the person making the emergency  
25 application, the location of the emergency application, the date of  
26 the emergency application, the product name and United States  
27 Environmental Protection Agency registration number of the  
28 pesticide applied, the reason for the emergency application, and

1 such other information as the authorized agency deems necessary.

2           Sec. 6.     (1) All persons performing residential lawn  
3 application on an area of more than one hundred square feet shall  
4 affix markers to be placed within or along the perimeter of the  
5 area where pesticides will be applied pursuant to the residential  
6 lawn application. Such markers shall be placed so as to be clearly  
7 visible to persons immediately outside the perimeter of such  
8 property, shall be posted at least twelve inches above the ground,  
9 and shall be at least four inches by five inches in size.

10           (2) The markers required in this section shall be in  
11 place at least twenty-four hours prior to the residential lawn  
12 application and on the day of the residential lawn application and  
13 shall instruct persons not to enter the property and not to remove  
14 the signs for a period of at least forty-eight hours. Such  
15 instruction shall be printed in bold letters.

16           Sec. 7.   The authorized agency shall review any emergency  
17 application form submitted pursuant to section 5 of this act to  
18 ensure that the circumstances warranted the emergency application.  
19 Such forms shall be kept on file by the authorized agency for three  
20 years from the date of the emergency application and shall be made  
21 available to any person upon request.

22           Sec. 8.   The building operator of any public building who  
23 personally applies or uses, or who contracts for or orders the  
24 application within the interior of any public building of, any  
25 pesticide requiring the direct supervision of a certified  
26 applicator or any pesticide which is sold solely for commercial  
27 applicator use and is restricted to uses other than household use  
28 shall post a conspicuous notice in such building at least

1 forty-eight hours prior to application in order to notify anyone  
2 entering or living in such building that a pesticide is being or is  
3 going to be applied. Such notice shall remain posted until  
4 forty-eight hours following the application.

5 If such pesticide is applied on a regular basis or  
6 according to a schedule, such notice may be permanently displayed  
7 and shall include the days or dates on which such pesticide is  
8 usually applied. If the pesticide is not applied on a regular  
9 basis or according to a schedule or if the pesticide is applied on  
10 a day or date other than the day or date contained on a permanently  
11 displayed notice, notice of the application and the date thereof  
12 shall be posted before the application of any pesticide and shall  
13 remain posted for twenty-four hours following the application.  
14 Such notice shall include (1) a notice of the location and hours  
15 during which any person may obtain information concerning the  
16 pesticide applied or to be applied and inspect and copy the  
17 material safety data sheet and (2) one or more telephone numbers  
18 for the building operator at which emergency information concerning  
19 the pesticide applied may be obtained at any time during the day or  
20 night and on any day of the year.

21 Sec. 9. The building operator shall make available, upon  
22 request and within a reasonable time after the request, the name of  
23 any pesticide used and a copy of the appropriate material safety  
24 data sheet. If the pesticide is to be applied by a commercial  
25 applicator or a certified applicator, such commercial applicator or  
26 certified applicator shall provide material safety data sheets as  
27 defined in section 81-15,205 to the building operator at the time  
28 the contract for service is entered or renewed. If any additional

1 pesticide is used after the contract for service is entered into,  
2 the commercial applicator or certified applicator shall provide  
3 additional material safety data sheets to the building operator.

4 A building operator shall retain for five years all  
5 material safety data sheets and other documents furnished pursuant  
6 to this section. A building operator shall retain statements of  
7 information for two years.

8 Sec. 10. (1) The authorized agency shall adopt  
9 ordinances establishing:

10 (a) Uniform standards for a consumer pesticide use  
11 information sign that shall be placed in retail establishments that  
12 sell general-use pesticides for commercial or residential lawn  
13 application. The sign shall contain the following information:  
14 (i) A warning notice directing consumers to follow directions on  
15 labels; (ii) a provision to inform the customer of the notice  
16 requirements set forth in the Local Pesticide Notification Act; and  
17 (iii) a recommendation that the customer notify neighbors prior to  
18 the application of pesticides so that such neighbors may take  
19 precautions to avoid pesticide exposure;

20 (b) The content and form of the written notice required  
21 by section 4 of this act shall include, but need not be limited to:  
22 (i) The address of the premises where application is to be done;  
23 (ii) the name, telephone number, and pesticide business  
24 registration number or certified applicator number of the person  
25 providing the application; (iii) the specific date of each  
26 pesticide application and two alternative dates to the proposed  
27 date of application when, due to weather conditions, the pesticide  
28 application of the proposed date is precluded; (iv) the product



1 name or names and the United States Environmental Protection Agency  
2 registration number or numbers of the pesticide or pesticides to be  
3 applied; and (v) a prominent statement that reads: "This notice is  
4 to inform you of a pending pesticide application to neighboring  
5 property. You may wish to take precautions to minimize pesticide  
6 exposure to yourself, family members, pets, or possessions.  
7 Further information about the product or products being applied,  
8 including any warnings that appear on the labels of such pesticide  
9 or pesticides that are pertinent to the protection of humans,  
10 animals, or the environment, can be obtained by calling the  
11 National Pesticides Telecommunications Network." The authorized  
12 agency shall review and revise as necessary the telephone number  
13 required to appear in notices pursuant to this section; and

14 (c) The manner in which persons providing commercial lawn  
15 application shall supply written notice as required under the Local  
16 Pesticide Notification Act, including mailing or leaving the notice  
17 with a responsible adult or in a conspicuous location on the  
18 abutting property, the manner in which the owner or owner's agent  
19 of a multiple-family dwelling under section 4 of this act shall  
20 supply such written notice to the occupants of such multiple-family  
21 dwelling pursuant to such section, and the manner in which the  
22 owner, owner's agent, or other person in a position of authority  
23 for all other premises covered under such section shall supply such  
24 written notice. Such ordinances shall specify a manner in which  
25 persons providing commercial lawn applications may provide an  
26 option to occupants of dwellings to decline further notice.

27 (2) The authorized agency shall prepare public  
28 educational materials explaining the requirements of the Local

1 Pesticide Notification Act and the health effects of lawn care  
2 pesticides on humans and the environment.

3           Sec. 11. (1) Any person who violates the Local Pesticide  
4 Notification Act or any ordinance adopted pursuant to the act shall  
5 be liable for a civil penalty not to exceed five hundred dollars  
6 for each offense, and in the case of a continuing violation, each  
7 day of violation shall constitute a separate offense. A person  
8 shall also be subject to a restraining order, a temporary or  
9 permanent injunction, or a mandatory injunction if such person has  
10 violated, is violating, or is threatening to violate the act or any  
11 ordinance adopted pursuant to the act. The district court of the  
12 county where the violation has occurred, is occurring, or is about  
13 to occur has jurisdiction to grant such relief upon good cause  
14 shown. Relief may be granted notwithstanding the existence of any  
15 other remedy at law and shall be granted without bond.

16           (2) The county attorney of the county in which a  
17 violation of such sections has occurred, is occurring, or is about  
18 to occur, when notified by the authorized agency of such violation  
19 or threatened violation, shall pursue appropriate proceedings  
20 without delay.

21           Sec. 12. Notwithstanding any other provision of law to  
22 the contrary, any city may, after public hearing, adopt an  
23 ordinance comprised of the provisions of the Local Pesticide  
24 Notification Act in its entirety and without exception, including  
25 all applicable definitions as provided in the act.

26           Sec. 13. Section 2-2625, Reissue Revised Statutes of  
27 Nebraska, is amended to read:

28           2-2625. Except as specifically provided in the Pesticide

1 Act and the Local Pesticide Notification Act, the provisions of ~~the~~  
2 ~~act~~ such acts shall preempt ordinances and resolutions by political  
3 subdivisions that prohibit or regulate any matter relating to the  
4 registration, labeling, distribution, sale, handling, use,  
5 application, or disposal of pesticides.

6 Sec. 14. If any section in this act or any part of any  
7 section is declared invalid or unconstitutional, the declaration  
8 shall not affect the validity or constitutionality of the remaining  
9 portions.

10 Sec. 15. Original section 2-2625, Reissue Revised  
11 Statutes of Nebraska, is repealed.